



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 20 2011

Cynthia Rodriguez Matthews
2006 Committee to Elect Cynthia Rodriguez Matthews
to the 26th Congressional District

Upland, CA 91784-1866

RE: MUR 6513
2006 Committee to Elect Cynthia
Rodriguez Matthews to the 26th
Congressional District, and Cynthia
Rodriguez Matthews, in her official
capacity as treasurer
Cynthia Rodriguez Matthews

Dear Ms. Mathews:

On December 13, 2011, the Federal Election Commission found that there is reason to believe the 2006 Committee to Elect Cynthia Rodriguez Matthews to the 26th Congressional District and you, in your official capacity as treasurer ("Committee"), violated 2 U.S.C. § 434(a) and (b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission also found reason to believe that you violated 2 U.S.C. § 432(e)(1) in connection with your 2008 campaign for Congress. These findings were based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You and the Committee may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you and the Committee have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you and the Committee are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office

13044331446

of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you and the Committee intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed forms stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you and the Committee notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,



Cynthia L. Bauerly
Chair

Enclosures
Factual and Legal Analysis

13044331447

FEDERAL ELECTION COMMISSION

RESPONDENTS: 2006 Committee to Elect Cynthia Rodriguez Matthews MUR: 6513
to the 26th Congressional District and Cynthia Rodriguez
Matthews, in her official capacity as treasurer
Cynthia Rodriguez Matthews

I. INTRODUCTION

This matter was initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). This matter concerns the failure of the 2006 Committee to Elect Cynthia Rodriguez Matthews to the 26th Congressional District ("Committee") to file any disclosure reports after the 2006 Year-End Report, whether and how the Committee's remaining cash-on-hand of \$67,070 was spent, and the absence of any Statement of Candidacy for the 2008 campaign. Based on the available information, there is reason to believe the Committee violated 2 U.S.C. § 434(a) and (b), and that Cynthia Rodriguez Matthews violated 2 U.S.C. § 432(e)(1).

II. FACTS

The Committee was the authorized campaign committee of Cynthia Rodriguez Matthews for the 2006 election for the Congressional seat in the 26th Congressional District of California. Although the Committee has never filed a request to terminate, it ceased filing disclosure reports with the Commission after filing its 2006 Year-End Report on January 31, 2007. In that report, the Committee reported cash-on-hand of \$67,070, an amount which exceeded its reported outstanding debts and obligations of \$15,837. Despite this significant amount of remaining cash, the Committee has never disclosed how it disposed of those remaining funds and has failed to respond to 18 consecutive Non-Filer Notifications sent by the Reports Analysis Division ("RAD"). RAD and OGC's General Law & Advice Division

13044331448

("GLA") have made attempts to obtain additional information about the Committee's activities since the time period covered by the 2006 Year-End Report, but none of these attempts has been successful.

Rodriguez Matthews' name appeared on the primary ballot in the 2008 Democratic primary for the 26th Congressional District of California. She received 32.6 percent of the vote and lost the election. Notwithstanding her apparent candidacy, she never filed a Statement of Candidacy, and no Statement of Organization or disclosure reports were filed in connection with her 2008 campaign. GLA previously attempted to obtain information from the Committee about the 2008 candidacy, but the Committee failed to respond.

On April 18, 2011, OGC notified Respondents pursuant to the Commission's Agency Procedures to Respondents in Non-Complaint Matters, dated August 4, 2009. The notification letter specified:

Based on information available to the Commission, it appears the Committee stopped regularly filing with the Commission after its 2006 Year-End Report. Its 2006 Year-End Report indicated it had \$67,070 cash-on-hand and \$15,837 in outstanding debts and obligations. The Committee has not filed a termination report, and it has failed to respond to fourteen consecutive Non-Filer Notifications, as well as a previous request by the Office of General Counsel (attached). Further, we noted that your name appeared on the ballot in the 2008 Democratic primary for the 26th Congressional District of California, but you neither registered a subsequent committee with the Commission nor disclosed any activity associated with that election.

The notification letter further stated that "the Commission's Office of the General Counsel is reviewing this information in connection with making a recommendation to the Commission as to whether there is reason to believe that the Committee and you, individually and in your capacity as treasurer, violated the Act."

Rodriguez Matthews requested and received a 30-day extension to respond to the Referral notification, making her response due on June 6. OGC subsequently granted a further

13044331449

extension until June 24 and informed the Respondents that a tolling agreement would be required if any further extensions were requested.

On Friday, June 24, Rodriguez Matthews sent OGC a letter but it contained no substantive response to the allegations. Rather, Rodriguez Matthews asserted that the letters she had received from OGC were "vague in nature," and that "when we requested clarification, you refused to answer with any specificity." She claimed that neither she nor the Committee's accountant had attempted to "side skirt this matter at any time," and had "always maintained contact in an attempt to provide you with what you needed," but "we cannot provide you information, without knowing what it is you are reviewing." She declined to sign the tolling agreement without first consulting counsel, which she said she would do on Monday, June 27.¹ OGC has received no further communication from Respondents.

III. LEGAL ANALYSIS

A. Committee

Each treasurer of an authorized committee of a candidate must file reports or receipts and disbursements in accordance with 2 U.S.C. § 434(a), disclosing the information set forth in 2 U.S.C. § 434(b), including any amounts transferred to other committees authorized by the candidate. 2 U.S.C. § 434(b)(4)(B). Despite receiving 18 Non-Filer notices, the Committee has not filed any disclosure reports since the 2006 Year-End Report, which was filed on January 31, 2007. Further because the Committee's last filed report disclosed cash-in-hand of \$67,070, it is apparent that the Committee also has failed to continually report its

¹ By letter dated June 28, 2011, OGC sent Rodriguez Matthews an additional letter confirming that it had received no requests for information from her, or her counsel, but, in order to give her an additional opportunity to file a response, OGC informed her that no action would be taken on the matter until close of business on July 1.

13044331451

cash-on-hand, and any disbursements it made using that cash-on-hand. Nor has the Committee ever filed a termination request. Therefore, it appears that the Committee violated 2 U.S.C. § 434(a) and (b) by failing to file disclosure reports containing information about its activity from December 31, 2006 to the present. Accordingly, there is reason to believe that the 2006 Committee to Elect Cynthia Rodriguez Matthews to the 26th Congressional District and Cynthia Rodriguez Matthews, in her official capacity as treasurer, violated 2 U.S.C. § 434(a) and (b).

B. Cynthia Rodriguez Matthews

An individual becomes a candidate for federal office when he or she has received contributions or made expenditures in excess of \$5,000. 2 U.S.C. § 431(2).² The Act requires each candidate for federal office to file a Statement of Candidacy and designate in writing a political committee to serve as the principal campaign committee of such candidate no later than 15 days after becoming a candidate. 2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1(a). Each authorized campaign committee must file a statement of organization no later than 10 days after

² Ballot access fees counts toward the "in excess of \$5,000 in expenditures" threshold for "candidate" status under section 431(2). Under the Act and the Commission's regulations, a "contribution includes neither payments made by a candidate or authorized committee of a candidate as a condition of ballot access, nor payments received by any political party committee as a condition of ballot access." 2 U.S.C. § 431(8)(B)(xii) and 11 C.F.R. § 100.90. In addition, an expenditure does not include payments received by a political party committee from candidates or their authorized committees as a condition of ballot access that are transferred to another political party committee or the appropriate State official. 2 U.S.C. § 431(9)(B)(x) and 11 C.F.R. § 100.150. However, the Act does not exclude from the definition of expenditure payments made by the candidate or the candidate's authorized committee for ballot access fees; thus, an authorized committee must report such payments as expenditures pursuant to 2 U.S.C. § 434(b). Since Congress excluded ballot access payments made by a candidate or authorized committee from the definition of "contribution" but did not include a similar exclusion from the definition of an "expenditure," and since "it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion," *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (quoting *Rumillo v. United States*, 464 U.S. 16, 23 (1983)), ballot access fees paid by a federal candidate or authorized committee are expenditures under the Act. Additionally, under the Commission's "testing the waters" regulations, payments made by an individual to qualify for the ballot under State law are not excluded from the definition of an "expenditure." 11 C.F.R. § 100.131(b)(5).

designation, pursuant to section 432(e)(1), and thereafter file reports with the Commission.

2 U.S.C. §§ 433, 434.

Our attempts to obtain additional information directly from the Respondents about their activities from December 2006 to the present have been unsuccessful, and the only information we have about Rodriguez Matthews' political activity during that time period is that she was a 2008 candidate for a seat in the House of Representatives from California's 26th Congressional District, she paid \$1,652 to the State of California to have her name placed on the primary election ballot for that race, and she lost that election with 32.6 percent of the vote. *See*

http://www.sos.ca.gov/elections/election_2008/4_4_certified_list_of_candidates.pdf, and

http://www.sos.ca.gov/elections/sov/2008_primary_june/us_reps08primary.pdf. Since

Rodriguez Matthews received close to a third of the votes in the primary, it seems likely that she made additional expenditures and received contributions or other monies during the 2008 campaign, including possible transfers from the Committee's remaining cash-on hand, that would cause her to exceed one or both of the \$5,000 candidate thresholds, thereby triggering her reporting obligations. Accordingly, there is reason to believe that Cynthia Rodriguez Matthews violated 2 U.S.C. § 432(e)(1) by failing to file a Statement of Candidacy for her 2008 campaign.

13044331452